

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.3512 of 2012

Date of Decision: 22nd September, 2017

Hoshiar Singh and another

...Petitioners

Versus

State of Haryana

..Respondent

CRR No.4187 of 2012

Smt. Krishna and others

...Petitioners

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present:

Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate
for the petitioner (in CRR No.3512 of 2012)

Mr. Virat Amar Nath, Garg, Advocate
for the petitioners (in CRR No.4187 of 2012)

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

A case by way of FIR No.150 dated 04.09.2002 under Sections 323,325,326,34 IPC was registered with Police Station, City Narwana on the statement of complainant Krishna against Hoshiar Singh, Chandi Ram and Ram Mehar @ Pappu. It is pertinent to mention here that accused Ram Mehar @ Pappu died on 24.06.2009 and as such proceedings against him stood abated vide orders dated 13.08.2009.

The brief allegations made in the statement Ex.PW3/A dated 31.08.2002 of complainant Krishna which led to the registration of the FIR Ex.PW8/E were to the effect that both the parties accused as well as complainant were having adjoining houses with a common wall. It is alleged that during the construction of common wall, both the parties have contributed half share. It is alleged that on 30.08.2002 around 3 p.m. accused Hoshier Singh and his brother accused Chandi Ram had started demolishing the common wall in question and also raised *lalkara* that they will take back the portion of the land beneath this common wall. Complainant Krishna is alleged to have objected to this action and it is the allegations of the prosecution that accused Hoshier Singh armed with *gandasa*, accused Chandi Ram armed with *lathi* and accused Ram Mehar empty handed attacked the complainant Krishna. Accused Hoshier Singh caused injuries on the left hand of the complainant with *gandasa* hitting on her fingers. Accused Chandi Ram hit the complainant Krishna with *lathi* and at that point of time husband of the complainant Ram Niwas was attracted, who tried to rescue his wife and it is alleged that accused Hoshier Singh had also attacked with *gandasa* on the right hand of the husband of the complainant and caused injuries on his thumb, whereas, accused Chandi Ram had caused injuries on the left arm of the husband of the complainant and when Malo Devi, tried to rescue her son and daughter-in-law, accused Chandi Ram is alleged to have attacked her with *lathi* leading to injuries on her left wrist and right arm. In the meanwhile, accused Ram Mehar alleged to have thrown bricks at the complainant party. The complainant side has claimed that daughter of accused Chandi Ram had also caused injuries to

the complainant side.

The prosecution at the trial examined PW1 Ram Niwas, PW2 HC Suresh, PW3 Krishna, complainant, PW4 Dr. Atul Khera, PW5 Malo Devi, PW6 Tara Chand, PW7 Dr. Dhan Kumar, PW8 Satpal, Inspector and PW9 Shobha Chand DSP. The accused denied the allegations in their stand taken under Section 313 Cr.P.C and in defence examined DW1 Rajbir Singh, Assistant in the Office of D.C. Jind , DW2 Dr. V.K. Satija, and DW3 Dr. M.L. Kocher and in the process proved documents Ex.D1 to Ex.D3 and Mark-A to Mark C. It was through judgment dated 06.09.2010, the Court of learned Sub Divisional Judicial Magistrate, Narwana held accused Hoshiar Singh and Chandi Ram guilty for commission of offences under Sections 323,325,326 read with Section 34 IPC and sentenced them as follows:-

Under Section 323 read with Section 34 IPC	Simple imprisonment for a period of six months and to pay fine of Rs.500/- and in default thereof to undergo imprisonment for 15 days.
Under Section 325 read with Section 34 IPC	Simple imprisonment for a period of one year and to pay fine of Rs.1000/- and in default thereof to undergo imprisonment for one month.
Under Section 326 read with Section 34 IPC	Simple imprisonment for a period of two years and to pay fine of Rs.3500/- and in default thereof to undergo imprisonment for two months.

The same was challenged by the convicts/petitioners before the Court of learned Additional Sessions Judge, Jind by way of appeal No.134 of 2010 and at the same time the complainant also filed appeal challenging the quantum of sentence so awarded to both the accused by way of appeal No.151 of 2010 which were disposed off through a common judgment dated 13.10.2012, whereby, the Court of learned Additional Sessions Judge, Jind partly allowed the appeal of the convicts

Hoshiar Singh and Chandi Ram, thereby, setting aside their conviction under Section 326 IPC and held them guilty for commission of offences under Sections 323,325, read with Section 34 IPC and the appeal of the complainant challenging the quantum of sentence stood dismissed.

In the light of the same, the convicts Hoshiar Singh and Chandi Ram filed criminal revision No.3512 of 2012, whereas, complainant Krishna filed criminal revision No.4187 of 2012 before this Court. Since both these revisions have arisen from the same very judgment, therefore, are being disposed off together.

Learned Senior counsel for the petitioners at the very onset has taken the plea that the petitioners have suffered arduous of trial since the year 2002 and for almost 15 years had been tortured by this prosecution and offences for which they have been convicted being not of a serious in nature and that it would subserve the ends of justice, if the concession of probation as envisaged under Section 360 Cr.P.C be given to them which is not opposed by learned State counsel who does not differs over the modification of the sentence keeping in view the offences for which the petitioners have been convicted. Though, there had been much of heated debate over the enhancement of the sentence awarded to the convicts/petitioners as it is sought to be argued but as has been the contentions of the learned counsel for the convict/petitioners that all the injuries were found to be simple, whereas, injury No.4 was kept under observations and there was only case of blunt injury and fracture of first meta carpel was found on the person of complainant Krishna on the basis of Ex.PW7/B and vide Ex.PW7/C on the person of Malo Devi there was

fracture of lower and radios with styloid process left side.

The learned Court below as has been the contentions of the two sides has given well reasoned findings that injury No.1 on the person of complainant Krishna was on left palm below the index finger extending horizontally medially and has relied upon report Ex.D1 of the Board of Doctors and after going through the records MLRs and X-rays reports held that no fracture was seen and has sought to corroborate the stand of PW7 Dr. Dhan Kumar and the report of Board of Doctors, Dr. V.K. Satija and Dr. M.L. Kocher had come to the conclusion that there is nothing substantial to prove the fracture of first meta carpel on the person of complainant Krishna and has rightly held that no offence under Section 326 IPC was made out and only offences under Sections 323, 324, and 325 were made out.

Learned State counsel could not in any manner counter these submissions and pleas raised by learned counsel for the petitioners. Learned Courts below have rightly concluded that injury on the person of Malo Devi is covered under Section 325 IPC, whereas, rest of the injuries were covered under Section 324 IPC and no other point was raised by any of the side.

Keeping in view that from the last 15 years the petitioners have undergone the trial and consequent upon their initial conviction and subsequently modification of the appeal the sword of damocles is hanging upon them and keeping in view that the convicts are first offenders which is not rebutted by the State counsel who readily accepted the same and that both the parties are neighbours, residing in the

same very village with a common wall, thus, the Court must endeavour to bring about harmony between them and that if the petitioners, are sent behind the bars it would sow seeds of enmity and hatred which would engulf them in unending attrition and more so the provisions of Section 360 Cr.P.C which are meant for bringing the people back to the main stream of life and to prevent destituteness needs to be appropriately applied in the present case.

In view thereof, the petitioners are allowed concession of probation in terms of Section 4 of the Probation of Offenders Act, 1958 for a period of one year on their entering into a bond in the sum of Rs.25.000/- each with one surety each of the like amount to the satisfaction of the trial Court undertaking therein that they shall keep peace and maintain good behaviour and shall appear and receive sentence as and when called upon to do so during the said period. Thus, modifying the impugned judgement of conviction.

In the light of the same, the revision petition No.3512 of 2012 Hoshiar Singh and another vs. State of Haryana stands disposed off in those terms and CRR No.4187 of 2012 Krishna and others vs. State of Haryana stands dismissed.

(FATEH DEEP SINGH)
JUDGE

September 22, 2017

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No